

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PATRICK GUENTAGUE,

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>9/13/11</u>

Plaintiff,

-against-

THE CITY OF NEW YORK,

09 Civ. 7369 (DAB)  
ADOPTION OF REPORT  
AND RECOMMENDATION

Defendant.

-----X  
DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the August 10, 2011 Report and Recommendation of United States Magistrate Judge Gabriel W. Gorenstein (the "Report"). Judge Gorenstein's Report recommends that Defendant's Motion for Summary Judgment be GRANTED, (Report at 1, 10), and that Plaintiff's Cross-Motion be DENIED (Report at 10).

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). "[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the

magistrate's decision." Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (quoting Small v. Sec. of HHS, 892 F.2d 15, 16 (2d Cir. 1989)). This rule applies to pro se parties so long as the magistrate's report "explicitly states that failure to object to the report within [fourteen (14)] days will preclude appellate review..." Small, 892 F.2d at 16.

Despite being advised of the procedure for filing objections in Judge Gorenstein's Report, and warned that failure to file objections would waive objections and preclude appellate review, (Report at 10-11), Parties have filed no objections to the Report.

#### CONCLUSION

Having reviewed the Report, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Gabriel W. Gorenstein, dated August 10, 2011, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. Defendant's Motion for Summary Judgment is GRANTED. Plaintiff's Cross-Motion is DENIED.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose

of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to close the docket in this matter.

SO ORDERED.

Dated: New York, New York

September 13, 2011

Deborah A. Batts

Deborah A. Batts  
United States District Judge